RECENT CASE NOTES

ADMINISTRATIVE LAW—JUDICIAL REVIEW OF ORDER OF POSTMASTER GENERAL.—Acting under the Espionage Act of June 15, 1917, the Postmaster General ordered the plaintiff's publication excluded from the mails. From an interlocutory order granting a temporary injunction commanding the defendant, postmaster at New York, to transmit the plaintiff's publication, an appeal was taken. *Held,* that the order granting the preliminary injunction was erroneous. *Masses Publishing Co. v. Patten* (1917, C. C. A. 2nd) 246 Fed. 24.

The complainant filed its bill in equity to enjoin the postmaster from acting under the Espionage Act of June 15, 1917, to withdraw its mailing privilege. *Held,* that the complainant was not entitled to a preliminary injunction. *Jeffersonian Publishing Co. v. West* (1917, D. C. Ga.) 245 Fed. 585.

See COMMENTS, p. 550.

AGENCY—VOID POWER OF ATTORNEY—LEASE EXECUTED THEREUNDER NOT SUBJECT TO REFORMATION.—A statute provided that powers of attorney to make leases for a term of more than three years must be properly acknowledged and recorded. The plaintiff in error appointed an agent to have general supervision of the premises in question, but such authority was not acknowledged. Subsequently, the agent executed a lease to the defendant in error for a period of five years, the lease reading that the lessee would surrender possession on one year's notice. On refusal to quit after proper notice, action to oust was commenced, whereupon the defendant in error instituted proceedings to have the lease reformed, claiming that a clause had been omitted which would have made the lease terminable only after the happening of a specified event. *Held,* that since the agent's power of attorney was not acknowledged, the lease was void and could not be reformed. *Lithograph Bldg. Co. v. Watt* (1917, Oh.) 117 N. E. 25.

A power of attorney ordinarily need not be acknowledged. *Moore v. Pendleton* (1861) 16 Ind. 481; *Tyrrell v. O'Connor* (1897, Ct. Err.) 56 N. J. Eq. 448, 41 Atl. 674. But, if required by statute, acknowledgment is a condition precedent to the validity of the agent's acts. *Oatman v. Fowler* (1871) 43 Vt. 462. See also 1 Mechem, *Agency,* 166; 1 *R. C. L.* 258. In such cases the factual element of authority is present, for the principal has given the agent what he believed to be sufficient authority; but, because of the effect of the statute, the expected legal relations are not created, and the intended agent does not acquire the "legal power" to convey. Where there is no "power" because of non-compliance with the statute, equity will not take cognizance of the agent's acts with a view to reformation; for there must first be a valid agreement. *Gebb v. Rose* (1874) 40 Md. 387; *Hedges v. Dixon County* (1893) 150 U. S. 182, 192, 14 Sup. Ct. 71. See also 34 *Cyc.* 915. Consequently, since the invalidity could not be remedied, the addition of the omitted words would be vain. An instrument inoperative as such because of the agent's lack of power may be given the effect of a contract to make such an instrument, if such contract would have been within the agent's powers. *Heinlen v. Martin* (1879) 53 Cal. 321; *Lobdell v. Mason* (1894) 71 Miss. 937, 15 So. 44; see also 1 Mechem, *Agency,* 162. In the principal case, power to make any such contract was lacking.

ALIEN ENEMIES—RIGHT TO SUE—FRENCH CORPORATION WITH GERMAN STOCKHOLDERS SUING IN FRANCE.—A mining company incorporated and managed in

France, operating in the Barbary States, Africa, was managed by a board of four directors, of whom only one was German. Eight-tenths of the stock, however, was owned by German subjects resident in Germany. The company was engaged in selling the products of its mines in Germany. The company brought an action in France. *Held,* that the large stock ownership by Germans was evidence of German control, and precluded the maintenance of the action. *Mines de Barbary v. Reymond* (Court of Paris, July 7, 1916) reported in (1917) 44 CLUNET, 226.

In this case, the French courts had to deal with the same problem which was presented to the English Court of Appeal in the case of *Daimler v. Continental Tyre Co.* (C. A.) [1915] 1 K. B. 893, and to a New York court in *Fritz Schultz Jr. Co. v. Raimes* (1917, N. Y. Sup. Ct.) 166 N. Y. Supp. 567. See COMMENT in (1917) 27 YALE LAW JOURNAL, 108. It was stated as a *dictum* in the English case that to determine enemy character the court might go behind the English incorporation and ascertain the actual enemy *control* of the corporation, in spite of the rule of English law that the nationality of corporations is governed by the place of incorporation. According to a uniform line of decisions in France, the nationality of corporations is governed by the law of the place of its center of administration (*siège social*). Nevertheless, superimposing upon this rule of "private law" (*sic*) a new rule of public law, a legislative decree of Sept. 27, 1914, had provided that the actual control of corporations by alien enemies was sufficient to permit the sequestration of their property. In the English case the control of the corporation's business was deemed to be in the Board of Directors, toward which the court looked rather than to the stockholders, as was done in the principal case in France. The English view was the one accepted by the New York Supreme Court in *Fritz Schultz, Jr. Co. v. Raimes, supra.*

BILLS AND NOTES—DISCHARGE OF CO-MAKER SURETY UNDER N. I. L.—SURRENDER OF COLLATERAL BY PAYEE.—The plaintiff, payee of a promissory note, sued the defendants whose names appeared as makers but whom he knew to have signed as sureties. The sureties defended on the ground that the plaintiff, without their knowledge or consent, had surrendered to the principal debtor collateral securities. The plaintiff claimed that under the Negotiable Instruments Law this was no defense. *Held,* that the sureties were discharged. *Southern Nat. Life Realty Corp. v. People's Bank* (1917, Ky.) 198 S. W. 543.

According to the law merchant the surrender of collateral security by the creditor, or other conduct prejudicially altering the surety's position without his consent, operated to release the surety wholly or *pro tanto* from liability. *Guild v. Butler* (1879) 127 Mass. 386; *Elsey v. People's Bank* (1915) 166 Ky. 386, 179 S. W. 392. Has the Negotiable Instrument Law changed this equitable rule? This problem has had a checkered career in the courts of Kentucky. It was first held, without reference to the statute, that the old law merchant rule obtained. *Elsey v. People's Bank, supra.* But on petition for rehearing, the court's attention being drawn to section 119, N. I. L., the former opinion was withdrawn and the surety was held liable. *Elsey v. People's Bank* (1916) 168 Ky. 701, 182 S. W. 873. Finally, in the principal case, the court has overruled the latter decision and, frankly admitting that certain sections of the Act were not then considered, has restored the rule that the surety is discharged. The reasoning upon which this conclusion is reached is as follows: In the hands of the payee the note was merely "issued," not "negotiated" (sections 190, 30, N. I. L.), hence the payee was not a "holder in due course" (section 52), and the note was subject to the same defenses as if it were non-negotiable (section 58). When the question arises between the immediate parties to the instrument,